



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 245

Fee disclosure statements

February 2017

About this guide

This guide is for persons who provide personal advice to retail clients, and their professional advisers (such as lawyers).

This guide explains the fee disclosure statement (FDS) obligations in Div 3 of Pt 7.7A of the *Corporations Act 2001* (Corporations Act) for persons who provide personal advice to retail clients under an ongoing fee arrangement.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This version was issued in February 2017 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 245, issued January 2013 and reissued March 2013

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

Australian financial services (AFS) licensees and representatives of AFS licensees who have entered into ongoing fee arrangements with retail clients must provide these clients with a fee disclosure statement (FDS) on an annual basis.

This guide explains the FDS obligations in Div 3 of Pt 7.7A of the *Corporations Act 2001* (Corporations Act). In particular, it provides guidance on:

- who must give an FDS;
- how to prepare an FDS; and
- how and when an FDS must be given.

In addition to the obligation to give an FDS, other fee and remuneration disclosure and conduct obligations apply to AFS licensees and their representatives. These obligations include the disclosure of certain information in the Financial Services Guide (FSG) and in any Statements of Advice (SOAs).

RG 245.1 Australian financial services (AFS) licensees and representatives of AFS licensees who have entered into ongoing fee arrangements with retail clients must comply with the fee disclosure statement (FDS) obligations in Div 3 of Pt 7.7A of the *Corporations Act 2001* (Corporations Act). The licensee or its representative who enters into an ongoing fee arrangement, or is assigned the rights under such an arrangement, is the ‘fee recipient’: see RG 245.14 for a full definition of this term. See also RG 245.20–RG 245.24 for a description of what constitutes an ‘ongoing fee arrangement’.

Note: In this guide, ‘client’ refers to ‘retail client’ as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations 2001 (Corporations Regulations).

RG 245.2 The FDS obligations are designed to help clients ascertain whether they are receiving a service from their fee recipient that is commensurate with the ongoing fees they are paying. This guide explains how the FDS obligations work. It also sets out how we will administer these obligations.

RG 245.3 This guide should be read in conjunction with other guidance we have issued, including:

- (a) [Regulatory Guide 104](#) *Licensing: Meeting the general obligations* (RG 104);
- (b) [Regulatory Guide 108](#) *No-action letters* (RG 108);
- (c) [Regulatory Guide 175](#) *Licensing: Financial product advisers—Conduct and disclosure* (RG 175);

- (d) [Regulatory Guide 183](#) *Approval of financial services sector codes of conduct*;
- (e) [Regulatory Guide 221](#) *Facilitating online financial services disclosures* (RG 221);
- (f) [Regulatory Guide 244](#) *Giving information, general advice and scaled advice* (RG 244); and
- (g) [Regulatory Guide 246](#) *Conflicted remuneration*.

FDS obligations

- RG 245.4 The FDS obligations were introduced as part of the Future of Financial Advice (FOFA) reforms under the *Corporations Amendment (Future of Financial Advice Measures) Act 2012*.
- RG 245.5 Fee recipients must give clients an FDS on an annual basis, which discloses information about the previous 12 months of their ongoing fee arrangement. An ongoing fee arrangement exists when a retail client is given personal advice and the client enters into an arrangement with the adviser, under which the client is charged an ongoing fee during a period of more than 12 months: see RG 245.20–RG 245.24 for a full explanation of the term ‘ongoing fee arrangement’.
- RG 245.6 The FDS obligations must be met for all retail clients who have entered into an ongoing fee arrangement. This includes both pre-FOFA clients and post-FOFA clients: see Table 1.

Table 1: Definition of pre-FOFA client and post-FOFA client

Pre-FOFA client	<p>A person who enters into an ongoing fee arrangement with an AFS licensee or its representative:</p> <ul style="list-style-type: none"> • either before or after the date that the FDS obligations applied to that licensee or representative; and • who was provided with personal advice as a retail client by that licensee or representative before the FDS obligations applied to that licensee or representative.
Post-FOFA client	<p>A person who enters into an ongoing fee arrangement with an AFS licensee or its representative:</p> <ul style="list-style-type: none"> • on or after the date that the FDS obligations applied to that licensee or representative; and • who was not provided with personal advice as a retail client before that date by the licensee or representative.

Requirements in relation to FDSs

- RG 245.7 In Section B, this guide explains how to prepare an FDS, including:
- (a) who must give an FDS;
 - (b) when the obligation to give an FDS arises; and
 - (c) what must be included in an FDS.
- RG 245.8 Section C explains how and when a fee recipient must give an FDS.

Timing and implementation

- RG 245.9 Compliance with the FDS obligations, which appear in Pt 7.7A of the Corporations Act, became mandatory from 1 July 2013. However, AFS licensees could elect to comply with Pt 7.7A before 1 July 2013 by notifying ASIC under s967.
- RG 245.10 This means that the FDS obligations applied to all fee recipients from 1 July 2013, unless an AFS licensee elected to comply with Pt 7.7A before this date. If an AFS licensee elected to comply before 1 July 2013, the FDS obligations applied from the date specified in the notice lodged with ASIC under s967.

Other fee and remuneration disclosure and conduct obligations

- RG 245.11 In addition to the FDS obligations, the Corporations Act imposes other fee and remuneration disclosure and conduct obligations on AFS licensees and their representatives who provide financial product advice to retail clients. These obligations include:
- (a) preparing and providing a Financial Services Guide (FSG) under s941–943 (see RG 175 for guidance on this obligation);
 - (b) where personal advice is provided, preparing and providing a Statement of Advice (SOA) under s946–947 (see RG 175 for guidance on this obligation);
 - (c) complying with the renewal notice and opt-in requirements under s962K–962Q, unless granted an exemption by ASIC under s962CA (see RG 183); and
 - (d) complying with the provisions on conflicted remuneration and other banned remuneration in Divs 4 and 5 of Pt 7.7A (see RG 246).
- RG 245.12 AFS licensees and their representatives must determine and comply with all their legal obligations in relation to fee and remuneration disclosure and conduct.

B Preparing an FDS

Key points

The obligation to provide an FDS falls on the fee recipient who enters into the ongoing fee arrangement or who is assigned the rights under the ongoing fee arrangement.

An FDS must contain information from the previous 12-month period about:

- the amount of fees paid by the client;
- the services received by the client; and
- the services that the client was entitled to receive.

When the rights under an ongoing fee arrangement of an AFS licensee or its representative have been assigned to another person during the period covered by an FDS, the FDS must contain information about the fees paid by the client and the services they received (or were entitled to receive) during the 12-month period from both the assignor and the current fee recipient (i.e. the assignee).

Who must give an FDS?

RG 245.13 An FDS must be given by the ‘fee recipient’: see s962C.

RG 245.14 A fee recipient is:

- (a) an AFS licensee or its representative who enters into an ongoing fee arrangement with a client; or
- (b) if the rights of the person who entered into the ongoing fee arrangement have been assigned, the person who currently holds those rights (i.e. the assignee).

RG 245.15 A representative of an AFS licensee includes an authorised representative of the licensee, an employee or director of the licensee, or an employee or director of a related body corporate of the licensee.

RG 245.16 When a representative of an AFS licensee is responsible for giving an FDS, the AFS licensee must monitor the representative’s compliance with the FDS obligations, in accordance with the licensee’s general obligations under s912A(1)(ca).

RG 245.17 An assignee is an AFS licensee or its representative who is assigned the rights under an ongoing fee arrangement of another AFS licensee or its representative. An assignor is the AFS licensee or its representative who assigns its rights to the assignee.

RG 245.18 A fee recipient may outsource some of its administrative or compliance functions under a commercial arrangement with a third-party agent. For example, a fee recipient may engage an administration provider to generate and provide FDSs on its behalf. However, the fee recipient cannot itself transfer the actual obligation or liability to provide an FDS, and will remain responsible for ensuring that this obligation is met: see RG 104.31–RG 104.33.

When does the obligation to give an FDS arise?

RG 245.19 The obligation to give an FDS only arises if an ongoing fee arrangement exists between a client and an AFS licensee or its representative.

RG 245.20 An ongoing fee arrangement exists when an AFS licensee or its representative gives personal advice to a retail client and the client enters into an arrangement with the licensee or representative, the terms of which provide for the payment of a fee during a period of more than 12 months.

RG 245.21 For the purposes of the definition of ‘ongoing fee arrangement’, a fee is *any* fee (however described or structured) that is paid under the terms of an ongoing fee arrangement between the AFS licensee or its representative and the client: see s962B.

RG 245.22 As stated at para 1.18 of the Replacement Explanatory Memorandum to the Corporations Amendment (Future of Financial Advice) Bill 2012 (Replacement Explanatory Memorandum), the intent of the obligation is to capture ongoing fee arrangements where ongoing fees are received by the fee recipient for personal advice (including where the client is paying ongoing fees despite not actually receiving ongoing advice).

RG 245.23 An arrangement under which a client receives unrelated separate pieces of advice does not necessarily constitute an ongoing fee arrangement, even if the client uses the same adviser over a period of more than 12 months.

Note: An AFS licensee or its representative cannot enter into a scheme for the sole or dominant purpose of avoiding the FDS obligations: s965.

RG 245.24 The following are *not* ongoing fee arrangements:

- (a) a payment plan meeting prescribed requirements—for example, an upfront advice fee paid in instalments (this is excluded under s962A(3));
- (b) an arrangement under which the only fee payable is an insurance premium (this is excluded under s962A(4)); and
- (c) an arrangement to the extent that the fee payable is a product fee (this is excluded under s962A(5) and reg 7.7A.10).

What must be included in an FDS?

- RG 245.25 For the purposes of Div 3 of Pt 7.7A, an FDS is a statement in writing that includes information about the previous 12-month period of an ongoing fee arrangement: s962H. That 12-month period must end no more than 60 days before the statement is given to the client.
- RG 245.26 The following information must be included in an FDS:
- (a) the amount (in Australian dollars) of each ongoing fee paid by the client under the ongoing fee arrangement in the previous year. An ‘ongoing fee’ is any fee payable under an ongoing fee arrangement: see s962B. The requirement to express the amount of each ongoing fee in Australian dollars (s962H(2)(a)) means that the fees must be stated as dollar amounts rather than, for example, as a percentage of funds under advice;
 - (b) information about the services that the client received under the ongoing fee arrangement in the previous year (including from any previous AFS licensee or representative under the client’s ongoing fee arrangement); and
 - (c) information about the services that the client *was entitled to* receive under the ongoing fee arrangement in the previous year (including from any previous AFS licensee or representative under the client’s ongoing fee arrangement).

How should the information be presented?

- RG 245.27 We consider that the policy intent of the obligations is that the FDS should be consumer friendly, concise and easy to read.
- RG 245.28 The purpose of the FDS is to help clients work out what services they are paying for, what services they have received and how much those services cost. This will enable clients to make an informed decision about whether the arrangement should continue.
- RG 245.29 The Corporations Act does not prescribe the level of detail required in an FDS. Fee recipients will need to determine the level of detail needed to communicate the required information clearly and effectively, including how services and fees should be described and presented in the statement.
- RG 245.30 Fee recipients should be careful to comply with the general obligations in the Corporations Act and the *Australian Securities and Investments Commission Act 2001*. In particular, it is important to comply with the provisions that deal with misleading or deceptive conduct and false or misleading representations.
- RG 245.31 Fee recipients need to decide how to describe the services actually provided under the ongoing fee arrangement. For example, a fee recipient could describe whether a client received personal advice on a particular topic or whether they received a standardised brochure containing general advice on

that topic. To ensure that the client is not misled, the fee recipient must clearly distinguish between the services actually provided and the services that the client was entitled to receive.

- RG 245.32 The Corporations Act does not prohibit the inclusion of additional information in the FDS. However, additional information should generally be kept separate from the prescribed information, to ensure that the additional information does not affect the client's ability to determine whether the services they are receiving are commensurate with the ongoing fees they are paying. For example, any information included about future services (additional information) should be clearly separated from information about services provided or services that the client was entitled to receive over the 12 months covered by the FDS (prescribed information).
- RG 245.33 Likewise, fee recipients are not prohibited from including, in a single document, details of fees and services payable by an individual client under multiple ongoing fee arrangements. However, it is important to ensure that this information is set out clearly, and that the way in which information about multiple ongoing fee arrangements is presented does not affect the client's ability to easily assess the services they are receiving and the fees they are paying under each arrangement. Fee recipients also need to be careful to provide the FDS within the time periods specified for the various arrangements: see RG 245.46 for further information.

Do commissions need to be disclosed?

- RG 245.34 The Replacement Explanatory Memorandum notes at para 1.13 that an ongoing fee paid by a third party to an AFS licensee or its representatives (which would include a commission) will generally not constitute an ongoing fee for the purposes of s962A(1)(c) and 962A(2)(c), unless the fee is paid with the clear consent of, or at the direction of, the client.

Note: Commissions are generally banned under the conflicted remuneration provisions in Pt 7.7A, unless the commissions are excluded from these provisions under the transitional provisions in s1528(1) and reg 7.7A.16 (i.e. they are given under 'grandfathered' arrangements) or they are explicitly permitted (e.g. under s963B or 963C): see RG 246.

- RG 245.35 We therefore consider that commissions do not generally need to be disclosed in the FDS, on the basis that they are paid under a commercial arrangement between a product issuer or platform operator and a fee recipient. However, fee recipients should consider whether any commission arrangements were entered into with the clear consent of, or at the direction of, the client and therefore need to be disclosed. We would not generally consider that a commission arrangement was entered into with the clear consent of, or at the direction of, the client merely because it has been disclosed in the SOA.

- RG 245.36 If it is too difficult for a fee recipient to determine the breakdown of the commission and advice fees, we consider that they should disclose all of the fees in the FDS.
- RG 245.37 If commissions are not disclosed in the FDS, the fee recipient should be careful to ensure that the wording of the FDS does not mislead clients by implying or suggesting that the fees disclosed are the only payments received by the fee recipient.

When an ongoing fee arrangement is assigned

- RG 245.38 If an ongoing fee arrangement has been assigned during the 12-month period covered by an FDS, the FDS must include information about:
- (a) the fees paid to the assignor and the services received (or entitled to be received) by the client from the assignor; and
 - (b) the fees paid to the current fee recipient (i.e. the assignee) and the services received (or entitled to be received) by the client from the assignee during that 12-month period: s962H.
- RG 245.39 When an ongoing fee arrangement is assigned, assignees should ensure that they obtain the information that is required to be included in the next FDS. For example, assignees should consider including a provision in their agreement with the assignor that requires the assignor to provide this information.

Note: When the FDS obligations were first introduced as part of the FOFA provisions, we stated that we would not take enforcement action for a breach of the FDS content requirements in s962H if a breach occurred because a fee recipient was unable to obtain essential information from the assignor of an ongoing fee arrangement (e.g. in circumstances where the assignor had died). This no-action position only applied where clients had entered into an ongoing fee arrangement before the FOFA provisions came into force, on the basis that failure to comply with the FDS content requirements for a post-FOFA client would result, as a matter of law, in the termination of the ongoing fee arrangement: s962F.

Because compliance with the FDS content requirements has been mandatory since 1 July 2013, we now expect all fee recipients to meet these requirements, or to put in place measures to ensure they are able to meet these requirements before being assigned the rights under an ongoing fee arrangement. This means that the no-action position referred to in this note is no longer applicable.

- RG 245.40 Failure to comply with the content requirements for an FDS for a post-FOFA client will result in the termination of the ongoing fee arrangement: s962F. A civil penalty may arise if the fee recipient charges an ongoing fee after an arrangement has terminated: s962P and 1317E.
- RG 245.41 Accordingly, if a fee recipient is unable to comply with the content requirements for an FDS for a post-FOFA client, following the assignment of the client's ongoing fee arrangement, the fee recipient should enter into a new ongoing fee arrangement with the client to avoid termination of the arrangement. In these circumstances, fee recipients would only need to include information about the new ongoing fee arrangement in the FDS.

C Giving an FDS

Key points

We consider that an FDS can be given to a client using a range of media and technologies.

The FDS must relate to a period of 12 months ending no more than 60 days before the statement is given to the client. This means that the disclosure day will remain the same each year, as long as the annual statement relates to the same 12-month period.

For the first FDS, the disclosure day will be the anniversary of the date that the ongoing fee arrangement was entered into.

For all subsequent FDSs, the disclosure day is the anniversary of the day immediately after the end of the 12-month period covered by the previous FDS.

An FDS must be given to a client no later than 60 days after the disclosure day. Fee recipients have some flexibility to give clients an FDS earlier than the actual disclosure day. This will help fee recipients who wish to reset the disclosure day to streamline the timing of their FDS obligations.

How must an FDS be given?

- RG 245.42 An FDS must be provided in writing (see s962H(1)); however, the term ‘writing’ is broadly defined under the *Acts Interpretation Act 1901*, and encompasses communication by facsimile, email or through a secure online facility.
- RG 245.43 Therefore, we consider that the FDS can be given to the client using a range of media and technologies. For example, a fee recipient can provide a client with an FDS by:
- (a) giving the client a paper FDS personally;
 - (b) sending a paper FDS to the client’s postal address;
 - (c) sending an electronic FDS by email, either in the body of the email or through an attachment; or
 - (d) sending correspondence with a reference to a secure online portal where the FDS can be found.
- RG 245.44 We encourage fee recipients to agree to an appropriate form of communication with their clients, taking into account how their clients prefer to receive documents. We also encourage fee recipients to consider our good practice guidance in RG 221 if they deliver FDSs online.

When must an FDS be given?

RG 245.45 Under s962G and 962S, fee recipients must provide clients with an FDS before the end of a period of 60 days beginning on the disclosure day—that is, if the disclosure day is 1 June, the FDS can be given at any time on or before 30 July. See RG 245.46 for more information on the disclosure day, and RG 245.52–RG 245.56 for details about how to reset the disclosure day.

Note: The *Corporations Amendment (Financial Advice Measures) Act 2016* amended:

- the time period for an FDS to be given from 30 days to 60 days—before 19 March 2016, the 30-day time period was applicable; and
- the wording of s962S from the requirement to provide an FDS *within* a period of 30 days beginning on the disclosure day, to the requirement to provide an FDS *before the end of* a period of 60 days beginning on the disclosure day. Before the commencement of the Act, ASIC took a no-action position where a fee recipient breached s962S solely because it provided the FDS earlier than the disclosure day.

What is the ‘disclosure day’?

RG 245.46 Section 962J defines ‘disclosure day’ for the purposes of Pt 7.7A, as follows:

- For the first FDS, the disclosure day is the anniversary of the date that the ongoing fee arrangement was entered into.
- For all subsequent FDSs, the disclosure day is the anniversary of the day immediately after the end of the 12-month period covered by the previous FDS.

Example 1: Identifying the dates for disclosure

XYZ Licensee enters into an ongoing fee arrangement with Alex Lee on 1 September 2015. XYZ Licensee provides an FDS to Alex on 15 September 2016. The statement must relate to a period of 12 months, ending no more than 60 days before the date that the statement is given.

To ensure that the disclosure day remains the same each year, XYZ’s statement covers the period 1 September to 31 August each year, making the disclosure day 1 September in each subsequent year.

The relevant dates for Alex’s FDSs are set out in Table 2.

Table 2: Relevant dates for FDSs for Alex Lee in Example 1

Event	Date
Ongoing fee arrangement first entered into	1 September 2015
First disclosure day	1 September 2016
First FDS must be given on or before	30 October 2016
First FDS is actually given by XYZ Licensee	15 September 2016
Period covered by first FDS	1 September 2015 to 31 August 2016
Second disclosure day	1 September 2017

How to determine the disclosure day

- RG 245.47 In most cases, it will be easy to determine the disclosure day. However, we understand that in some cases it will be more difficult.
- RG 245.48 Fee recipients should consider the following factors when determining the day that an arrangement was entered into for the purposes of identifying the first disclosure day:
- (a) If a new arrangement terminates an earlier arrangement, the first disclosure day will be the anniversary of the date the new arrangement is entered into.
 - (b) If there are two or more separate ongoing fee arrangements, there will be multiple disclosure days and the disclosure obligations will apply to each ongoing fee arrangement separately.
- RG 245.49 To determine the disclosure day when an ongoing fee arrangement has been assigned to a fee recipient, the fee recipient will need to:
- (a) identify whether an FDS has previously been provided to the client and the period covered by the previous statement; or
 - (b) if an FDS has not previously been provided to the client under the ongoing fee arrangement, identify when the arrangement was first entered into.
- RG 245.50 An assignment or transfer of rights under an ongoing fee arrangement will not usually trigger the creation of a new ongoing fee arrangement with the client, if the character of the arrangement does not change. However, as stated at para 1.61 of the Replacement Explanatory Memorandum, it will depend on the circumstances of each assignment or transfer.
- RG 245.51 The fee recipient should determine whether an assignment results in the arrangement changing character to such a degree that it essentially becomes a new arrangement with a new disclosure day (e.g. there is a change in the fundamental services provided and/or fees received under the arrangement). In certain circumstances, the fee recipient might decide that it would be administratively easier to enter into a new arrangement with the client.

Note: When the FDS obligations were first introduced as part of the FOFA provisions, we provided the guidance that, if it was impossible or unreasonably onerous to determine the day that an ongoing fee arrangement was entered into with a pre-FOFA client, we would not take enforcement action against the fee recipient for failing to provide an FDS to the client within a period of 30 days beginning on the first disclosure day (according to the requirement at the time), provided that the fee recipient:

- notified the client in writing of a date between 1 July 2013 and 31 January 2014 that it would treat as the anniversary of the day on which the ongoing fee arrangement was entered into;
- explained to the client the significance of that date for the purpose of the FDS obligations; and
- provided the client with an FDS before the end of a period of 30 days beginning on that date.

Because all pre-FOFA clients who entered into an ongoing fee arrangement before the FDS obligations came into force should by now have received a number of FDSs, this no-action position longer applies and we expect all fee recipients to use the correct disclosure day.

Streamlining disclosure days

RG 245.52 As noted at RG 245.45, fee recipients will have the flexibility to provide FDSs early to clients, even though each statement must cover a 12-month period.

New clients

RG 245.53 For new clients who have not yet received an FDS, a fee recipient can provide the FDS to the client before the disclosure day if it is convenient for them to do so. For example, a fee recipient can give a new client their first FDS before the end of the first 12 months of the ongoing fee arrangement in order to reset the disclosure day to another time of year that better suits the fee recipient's business needs.

RG 245.54 In this situation, the FDS must still cover a 12-month period, but the fee recipient should make it clear in the FDS that the ongoing fee arrangement only existed for a certain part of that 12-month period, and that the fees paid by the client and the services received only relate to that part of the 12-month period.

Example 2: Resetting the disclosure day for new clients

ABC Licensee wishes to streamline the production and dispatch of its FDSs. To facilitate this, ABC Licensee decides that it will send the first FDS on the same day to all new clients who first entered into an ongoing fee arrangement with ABC Licensee during the preceding 12-month period.

Each statement will contain information about the ongoing fee arrangement between ABC Licensee and the client over the given 12-month period, even though, for some clients, the duration of the arrangement will be less than 12 months at the time the first statement is given.

ABC Licensee decides that it will send FDSs to all new clients on 15 July 2016, covering the period from 1 July 2015 to 30 June 2016.

ABC Licensee has met its obligation to provide an FDS to its new clients. The disclosure day for ABC Licensee's new clients for that 12-month period is now reset to 1 July.

Existing clients

RG 245.55 A fee recipient may also choose to reset the disclosure day for a client who has already received an FDS by giving the client the next FDS before the disclosure day. This FDS will cover a 12-month period that overlaps with the period covered by the previous FDS. The disclosure day will then reset to the anniversary of the day immediately after the 12 months covered by the later FDS.

RG 245.56 In this situation, the fee recipient should make this overlap clear in the new FDS so that clients can fully understand the fees they have paid, the services they have received and the services they were entitled to receive.

Key terms

Term	Meaning in this document
advice	Personal advice
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
assignee	An AFS licensee or its representative who is assigned the rights under an ongoing fee arrangement of another AFS licensee or its representative
assignor	An AFS licensee or its representative who assigns its rights under an ongoing fee arrangement to an assignee
ASIC	Australian Securities and Investments Commission
authorised representative	A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee Note: This is a definition contained in s761A.
client	Retail client
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
disclosure day	For the first FDS, the disclosure day is the anniversary of the date that the ongoing fee arrangement was entered into. For all subsequent FDSs, the disclosure day is the anniversary of the day immediately after the end of the 12-month period covered by the previous FDS Note: See s962J of the Corporations Act for the exact definition.
fee disclosure statement (FDS)	A document required under s962G to be given in accordance with Div 3 of Pt 7.7A of the Corporations Act. Specifically, it is a statement in writing provided by a fee recipient to its clients on an annual basis about the previous period of 12 months of their ongoing fee arrangement, including information about the amount of fees paid by the client, the services received by the client, and the services that the client was entitled to receive

Term	Meaning in this document
fee recipient	<p>A fee recipient is:</p> <ul style="list-style-type: none"> • an AFS licensee or its representative who enters into an ongoing fee arrangement with a client; or • if the rights of the person who entered into the ongoing fee arrangement have been assigned, the person who currently holds those rights <p>Note: See s962C of the Corporations Act for the exact definition.</p>
financial product	<p>A facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); or • makes non-cash payments (see s763D) <p>Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.</p>
financial product advice	<p>A recommendation or a statement of opinion, or a report of either of these things, that:</p> <ul style="list-style-type: none"> • is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product; or • could reasonably be regarded as being intended to have such an influence. <p>This does not include anything in an exempt document</p> <p>Note: This is a definition contained in s766B of the Corporations Act.</p>
Financial Services Guide (FSG)	<p>A document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act</p> <p>Note: This is a definition contain in s761A.</p>
FOFA	Future of Financial Advice
ongoing fee	Any fee payable under the terms of an ongoing fee arrangement
ongoing fee arrangement	<p>An ongoing fee arrangement exists when an AFS licensee or its representative gives personal advice to a person as a retail client and the client enters into an arrangement with the licensee or representative, the terms of which provide for the payment of a fee (however described or structured) during a period of more than 12 months. This does not include certain arrangements that are exempt under Div 3 of Pt 7.7A of the Corporations Act</p>

Term	Meaning in this document
personal advice	<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> the person giving the advice has considered one or more of the client's objectives, financial situation and needs; or a reasonable person might expect the person giving the advice to have considered one or more of these matters <p>Note: This is a definition contained in s766B(3) of the Corporations Act.</p>
post-FOFA client	A person who enters into an ongoing fee arrangement with an AFS licensee or its representative on or after the date that the FDS obligations applied to that licensee or representative, and who was not provided with personal advice as a retail client before that date by that licensee or representative
pre-FOFA client	A person who enters into an ongoing fee arrangement with an AFS licensee or its representative either before or after the date that the FDS obligations applied to that licensee or representative, and who was provided with personal advice as a retail client by that licensee or representative before the FDS obligations applied to that licensee or representative
Pt 7.7 (for example)	A part of the Corporations Act (in this example, numbered 7.7)
reg 7.7A.10 (for example)	A regulation of the Corporations Regulations (in this example, numbered 7.7A.10)
representative of an AFS licensee	<p>Means:</p> <ul style="list-style-type: none"> an authorised representative of the licensee; an employee or director of the licensee; an employee or director of a related body corporate of the licensee; or any other person acting on behalf of the licensee <p>Note: This is a definition contained in s910A of the Corporations Act.</p>
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
Replacement Explanatory Memorandum	Replacement Explanatory Memorandum to the Corporations Amendment (Future of Financial Advice) Bill 2012
RG 108 (for example)	An ASIC regulatory guide (in this example numbered 108)
s967 (for example)	A section of the Corporations Act (in this example numbered 967), unless otherwise specified
Statement of Advice (SOA)	<p>A document that must be given to a client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>

Related information

Headnotes

assignee, assignor, disclosure day, FDS, fee disclosure statement, fee recipient, Future of Financial Advice reforms, ongoing fee, ongoing fee arrangement, personal advice, post-FOFA client, pre-FOFA client, retail client

Regulatory guides

[RG 104](#) *Licensing: Meeting the general obligations*

[RG 108](#) *No-action letters*

[RG 175](#) *Licensing: Financial product advisers—Conduct and disclosure*

[RG 183](#) *Approval of financial services sector codes of conduct*

[RG 221](#) *Facilitating online financial services disclosures*

[RG 244](#) *Giving information, general advice and scaled advice*

[RG 246](#) *Conflicted remuneration*

Legislation

Acts Interpretation Act 1901

Australian Securities and Investments Commission Act 2001

Corporations Act, Ch 7; Div 1, Div 3 and Div 6 of Pt 7.7A; s960, 962, 962A, 962B, 962C, 962CA, 962D, 962E, 962F, 962G, 962H, 962J, 962P, 962Q, 962R, 962S, 963B, 963A, 965, 988A, 1101C, 1317E and 1528

Corporations Regulations, Div 3 of Pt 7.7A

Corporations Amendment (Future of Financial Advice Measures) Act 2012

Replacement Explanatory Memorandum to the Corporations Amendment (Future of Financial Advice) Bill 2012

Corporations Amendment (Financial Advice Measures) Act 2016

Supplementary Explanatory Memorandum to the Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014